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No. 79-811

In the Supreme Court of the United States

OCTOBER TERM, 1979

CLAIBORNE HARDWARE CO., ET AL., PETITIONERS

v.

AARON HENRY, ET AL.,
UNITED STATES OF AMERICA, AND
MISSISSIPPI ACTION FOR PROGRESS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-41a) is reported at 595 F.2d 291. The opinion of the district court (Pet. App. 46a-57a) is reported at 424 F. Supp. 633. The previous orders of this Court denying certiorari (Pet. App. 67a) and denying rehearing (Pet. App. 68a) are reported at 405 U.S. 1019 and 406 U.S. 963. The previous opinion of the court

of appeals (Pet. App. 69a-95a) is reported at 444 F.2d 1300. The previous opinion of the district court (Pet. App. 102a-146a) is reported at 50 F.R.D. 251.

JURISDICTION

The judgment of the court of appeals (Pet. App. 42a-43a) was entered on May 21, 1979, and a timely petition for rehearing was denied on August 6, 1979 (Pet. App. 44a-45a). On October 20, 1979, Mr. Justice Powell extended the time for filing the petition for a writ of certiorari until November 25, 1979. The petition for a writ of certiorari was filed on November 23, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The pertinent constitutional and statutory provisions are reproduced at Pet. 4-7.

QUESTIONS PRESENTED

1. Whether the district court abused its discretion in finding that the United States is likely to succeed on the merits of its claim that it possesses a lien interest in funds distributed to one of the private respondents under the Headstart-Follow Through Act, 42 U.S.C. 2928.

2. Whether enforcement pending appeal of the state Chancery Court's judgment, which permanently enjoined respondents from protesting racial discrimination in Claiborne County, Mississippi, and held

respondents liable to petitioners for $1.25 million in damages, constitutes state action under the Fourteenth Amendment.

3. Whether the federal district court's preliminary injunctions, staying execution of the state court judgment pending review by the state appeals court, are barred by 28 U.S.C. 2283 or by the doctrine of *Younger* v. *Harris*, 401 U.S. 37 (1971).

STATEMENT

1. In 1966, a group of black citizens in Port Gibson, Claiborne County, Mississippi, organized a boycott of white businesses in Claiborne County to protest racial discrimination by the merchants and by local public officials. The leaders of the boycott held public meetings and organized picketing, leafletting and solicitations to encourage black citizens to support the boycott. The boycott lasted several years, during which occasional threats of violence and violence occurred (Pet. App. 2a-3a).

On or about October 31, 1969, after the boycott had been in effect for several years, 23 white merchants of Port Gibson and Claiborne County filed suit in the Chancery Court of Hinds County, Mississippi, against the NAACP, a New York corporation doing business in Mississippi, the Mississippi Action for Progress (MAP), a nonprofit Mississippi corporation which operates the federal Headstart program in Mississippi, and 146 individuals. Alleging that the defendants had organized and conducted the boycott, and that the boycott violated Mississippi conspiracy,

antitrust, and secondary boycott laws, the complaint sought an injunction against all further boycott activity and $3.5 million in damages. Also named as defendants were 56 banks alleged to be holding deposited funds of the NAACP. Pursuant to a Mississippi statute authorizing prejudgment attachment of the assets of a nonresident debtor (Miss. Code Ann. § 11-31-1 (1972)), writs of attachment were subsequently served against the defendant banks without notice or a hearing. The attached funds ($16,324.94) were owned by the Mississippi State Conference of the NAACP and local branches of the NAACP in Mississippi (Pet. App. 3a-4a, 60a).

2. On November 7, 1969, the Mississippi State Conference and the Coahoma Branch of the NAACP (individually and on behalf of all other local branches) filed an action under 42 U.S.C. 1983 in federal district court, claiming that the attachment of their funds in the defendant banks violated their due process rights. The State Conference and Coahoma Branch argued that the state branches were legally independent of the national NAACP, were not named as defendants in the state action, and, as residents, were not subject to the nonresident attachment statute. The merchants were subsequently joined as defendants in the federal action (Pet. App. 4a-5a). On December 15, 1969, the federal court issued a preliminary injunction prohibiting any attachment of these funds and ordering their release upon payment of a bond (Pet. App. 97a-98a). These orders

were never appealed and remain in effect (Pet. App. 5a, 31a-32a).

On December 15, 1969, an amended complaint was filed in the federal action. The amended complaint named as additional plaintiffs the national NAACP, MAP, and the individuals named as defendants in the state court suit. The amended complaint challenged the constitutionality of the Mississippi statutes under which the state suit was brought and sought an injunction against further state court proceedings (Pet. App. 5). On June 9, 1970, the district court preliminarily enjoined the merchants from proceeding in state court (Pet. App. 140a). On appeal, the court of appeals held that the mere commencement of the private suit in state court did not constitute state action for purposes of the Fourteenth Amendment (Pet. App. 89a).[1] It accordingly ordered the amended complaint to be dismissed for lack of jurisdiction (Pet. App. 95a). At the same time, however, the court emphasized that the injunction entered by the district court on December 15, 1969—which barred interference with the plaintiffs' funds held in the defendant banks—remained in effect pending further action by the district court (Pet. App. 77a-81a).

3. On August 9, 1976, after an eight-month trial, the state Chancery Court found the NAACP, MAP,

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[1] The court distinguished the filing of a private action from the entry of a state court judgment, indicating that in the latter case state action would be present because at that stage the "full power of the state come[s] into play in enforcing the judgment" (Pet. App. 89a).

and the other defendants in that action liable to the merchants for $1.25 million in damages. Without giving consideration to the December 15, 1969, injunction of the federal district court, the state court directed the defendant banks to pay the attached funds to the merchants in partial satisfaction of the judgment. The court also permanently enjoined all picketing and other boycott-related activities designed to protest racial discrimination. The NAACP, MAP and the individual defendants promptly appealed the final decree to the Mississippi Supreme Court (Pet. App. 6a-7a).[2]

On September 24, 1976, the state defendants filed a motion in Chancery Court for a stay of the injunction and a stay of enforcement of the money judgment.[3] They argued that immediate enforcement of the injunctive decree, the money judgment, or the requirement that a supersedeas bond in the amount of $1.56 million be posted to obtain a stay of execution (see note 3, *supra;* Pet. App. 29a) would cause irreparable injury by depriving them of their constitutional rights under the First and Fourteenth Amendments and by forcing them into bankruptcy. The motion was denied without explanation by the Chancery Court and by the Mississippi Supreme Court (Pet. App. 7a).

[2] This appeal remains pending.

[3] Under Mississippi law, money judgments may be enforced immediately upon their entry by the trial court (Pet. App. 7a). See Miss. Code Ann. § 11-51-3 (1972). In order to obtain a stay of execution pending appeal, the appellant must post a supersedeas bond in the amount of 125% of the judgment. Miss. Code Ann. § 11-51-31 (1979 Cum. Supp.). An injunctive order may be stayed within the discretion of the trial court or the Supreme Court and may be conditioned upon such bond as the court may direct. Miss. Code Ann. § 11-51-43 (1972).

4. Having exhausted the available avenues for relief from immediate execution of the judgment in the state courts, the NAACP, MAP and the individual defendants then sought a preliminary injunction in federal district court against enforcement of the state court judgment pending appeal of that judgment to the Mississippi Supreme Court. On October 1, 1976, they filed a supplemental complaint alleging that the state court judgment conflicted with the injunction entered by the federal district court on December 15, 1969, and that enforcement of the state judgment would violate the plaintiffs' rights under 42 U.S.C. 1983 and the First and Fourteenth Amendments. In support of their allegations of immediate irreparable injury, the plaintiffs presented affidavits detailing the NAACP's precarious financial condition and the extent of its First Amendment activities (Pet. App. 8a). The affidavits, which have not been disputed, demonstrate that the NAACP could not post the $1.56 million supersedeas bond or pay the $1.25 million judgment without terminating virtually all of its national operations (Pet. App. 9a).

On October 7, 1976, the United States filed a motion to intervene as a party plaintiff in the federal action and joined in the motion for injunctive relief. The complaint alleged that the United States had a lien interest in federal funds granted to MAP pur-

suant to the Headstart-Follow Through Act, 42 U.S.C. 2921, and that these funds could not be subjected to state process without the consent of the United States. In support of the motion for preliminary relief, the United States alleged that interference with the Headstart program in Mississippi would cause irreparable harm to the needy children who receive food, medicine, and other services under that program (Pet. App. 8a).[4]

On October 20, 1976, the district court found that the plaintiffs would suffer immediate and irreparable harm if the court did not stay enforcement of the state decree pending appeal and concluded that all of the other requisites for preliminary relief also had been satisfied. Accordingly, the court issued three preliminary injunctions to prohibit the merchants from: (1) taking any action to enforce the state court decree pending exhaustion of appellate remedies; (2) acting under the state court judgment to seize any of the funds on deposit in the defendant banks; and (3) seizing any of the funds or property employed by MAP in the Headstart program (Pet. App. 58a-61a, 62a, 65a-66a).[5] On appeal, the court of appeals affirmed (Pet. App. 43a).

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[4] The United States also supported the arguments of the NAACP, asserting that a federal interest exists in the continued effective operation of the NAACP and other private civil rights organizations because of the important role they play in enforcing national civil rights legislation.

[5] The district court also ordered the federal plaintiffs to post security in the sum of $100,000 (Pet. App. 63a).

ARGUMENT

1. The courts below correctly concluded that the United States was likely to succeed on the merits of its claim that MAP's Headstart funds are subject to a federal lien interest. The district court, therefore, did not abuse its discretion in determining that injunctive relief was appropriate to preserve the status quo of these funds pending further proceedings.[6]

It is undisputed that the assets of MAP consist almost entirely of funds provided by the United States through "Project Headstart" and property purchased with such funds. Both the district court (Pet. App. 51a-52a) and the court of appeals (Pet. App. 38a-40a) examined the relationship between the United States and MAP established by the Headstart-Follow Through Act, 42 U.S.C. 2928, and correctly concluded that the United States' continued interest in MAP's federal grant funds met the criteria for creation of an equitable lien under *Avco Delta Corp. Canada Ltd.* v. *United States*, 484 F.2d 692, 703 (7th Cir. 1973), cert. denied, 415 U.S. 931 (1974); *Citizens Co-Op Gin* v. *United States*, 427 F.2d 692, 695 (5th Cir. 1970), and *Morrison Flying Service* v. *Deming National Bank*, 404 F.2d 856 (10th Cir. 1968), cert. denied, 393 U.S. 1020 (1969).

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[6] The court of appeals noted that "the United States has adequately demonstrated that it would suffer irreparable harm from the destruction of its Headstart grantee in Mississippi [which] provides food, medical and other services to roughly 5,000 needy children" (Pet. App. 40a).

Although private, nonprofit Headstart organizations such as MAP are independent contractors and not federal agencies,[7] detailed government regulations under the Headstart-Follow Through Act provide strict controls to ensure that Headstart funds are used exclusively for the narrow purposes specified by Congress, namely "the effective delivery of comprehensive health, educational, nutritional, social, and other services to economically disadvantaged children and their families" (42 U.S.C. 2922). See 45 C.F.R. Part 74. In particular, these regulations provide that the United States retains a reversionary interest in all grant funds under the Act; moreover, all Headstart grantees are audited annually to ensure that they are complying with the Act and the implementing regulations. 45 C.F.R. 74.134, 1301.3-3(a), 1301.5-6(a).[8]

It is well established that the property of the United States cannot be subjected to state process without its consent. *Maricopa County* v. *Valley National Bank*, 318 U.S. 357, 362 (1943); *United States* v. *Alabama*, 313 U.S. 274, 281-282 (1941). This rule applies to equitable as well as legal interests in

[7] See *United States* v. *Orleans*, 425 U.S. 807 (1976).

[8] Contrary to petitioners' contention, the court of appeals did not hold "that so long as an entity receives some federal funding it cannot be sued without the government's permission" (Pet. 27). In finding an equitable lien, the court relied on the strict controls over expenditures of Headstart funds established by the Headstart-Follow Through Act and its regulations. The court of appeals emphasized that, under the regulations, "[t]he United States retains a reversionary interest in all grant funds and in all property purchased with such funds * * *" (Pet. App. 39a).

property. *Blake Construction Co.* v. *American Vocational Ass'n*, 419 F.2d 308, 311-312 (D.C. Cir. 1969). Since the United States has not consented to the destruction of its equitable lien in MAP Headstart funds, the district court properly enjoined petitioners from enforcing the state court judgment against MAP's funds or property. (Pet. App. 66a).

2. The remaining issues presented in the petition apply principally to the private respondents and only incidentally to the United States. See notes 9, 11, and page 18, *infra*. We nonetheless comment briefly on these issues.

a. Petitioner contends (Pet. 16) that the "mere entry of an enforcable state court judgment from which appeal lies as a matter of right is not 'state action' for purposes of the Fourteenth Amendment or 42 U.S.C. 1983."[9] But this statement of the question misconceives the subject of the federal injunction. The district court did not enjoin the "mere entry" of the state court judgment; rather, the district court enjoined *enforcement* of the state judgment pending appeal to the state supreme court. Plainly the enforcement of the state judgment by writ of attachment or execution would constitute "state action" for purposes of the Fourteenth Amendment (see *Fuentes*

[9] This contention is relevant only to the claims of the private respondents under 42 U.S.C. 1983; the United States' claim is based not on 42 U.S.C. 1983 but on its rights under the Headstart-Follow Through Act in the funds held in the defendant banks.

v. *Shevin*, 407 U.S. 67 (1972); *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337 (1969)) even if "mere entry" of the judgment would not.[10]

Moreover, as the court of appeals reasoned (Pet. App. 14a-15a), this Court's decisions in *Shelley* v. *Kraemer*, 334 U.S. 1 (1948), and *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964), support the conclusion that the entry of a judgment that is immediately enforcible under state law itself constitutes "state action." In *Shelley* v. *Kraemer*, the Court held that judicial enforcement of a racially restrictive covenant in a deed constituted state action under the Fourteenth Amendment. Similarly, in *New York*

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[10] Petitioners' contention (Pet. 17) that the decision of the court of appeals conflicts with *Flagg Brothers, Inc.* v. *Brooks*, 436 U.S. 149 (1978), is incorrect. In *Flagg Brothers*, the Court held that a creditor's private foreclosure sale did not constitute state action, even though the sale was authorized by state law. Unlike this case, *Flagg Brothers* did not involve judicial enforcement of a final decree. The Court in *Flagg Brothers* emphasized the difference between a creditor's private remedies and official remedies invoking judicial authority. 436 U.S. at 160-161 n.10. The Court distinguished cases such as *North Georgia Finishing, Inc.* v. *Di-Chem, Inc.*, 419 U.S. 601 (1975); *Fuentes* v. *Shevin*, 407 U.S. 67 (1972), and *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337 (1969), which had involved "overt [judicial] involvement" (436 U.S. at 157) either through court ordered process or state enforcement of the creditor's remedies. This case is analogous to *Fuentes* and *Sniadach*, rather than *Flagg Brothers*, because enforcement of the Chancery Court's judgment would bear "the clear and unmistakable imprimatur of the State" and would be "supported by the full panoply of state power." *Shelley* v. *Kraemer*, 334 U.S. 1, 19-20 (1948).

Times Co. v. *Sullivan*, in holding that a state court judgment in a common law libel suit constituted state action under the Fourteenth Amendment, the Court stated (376 U.S. at 265) (emphasis supplied; citations omitted):

> Although this is a civil lawsuit between private parties, the Alabama courts have applied a state rule of law which petitioners claim to impose invalid restrictions on their constitutional freedoms of speech and press. It matters not that the law has been applied in a civil action and that it is common law only, though supplemented by statute. * * * The test is not the form in which state power has been applied but, whatever the form, *whether such power has in fact been exercised.*

In this case, the state trial court entered a final judgment, and an application for a stay of that judgment pending appeal was denied by the state courts. Because the defendants in the state action demonstrated that they would suffer irreparable injury if they were required to post the state-required supersedeas bond as a condition of a stay (see page 7, *supra*), the district court correctly concluded that the state judgment was sufficiently definite and concrete in its effect to have the characteristics of state action under this Court's reasoning in *Shelley*.

b. Petitioners contend (Pet. 11-16) that, under the principles of *Younger* v. *Harris*, 401 U.S. 37 (1971), the district court erred by issuing its injunc-

tions in this case.[11] In *Younger*, the Court held that a federal district court should not enjoin a pending state criminal prosecution in the absence of bad faith by the officials bringing the prosecution or great and immediate irreparable injury to the federal plaintiff. *Id.* at 46-49. The decision is based on the traditional reluctance of courts of equity to enjoin state criminal prosecutions (*id.* at 43-44) and on principles of comity and federalism, which counsel against undue interference with "the legitimate activities of the States" (*id.* at 44).

Although the Court has recently extended the *Younger* doctrine to certain types of state civil enforcement proceedings, it has thus far declined to apply the doctrine to all civil litigation. *Moore* v. *Sims*, No. 78-6 (June 11, 1979), slip op. 7 n.8; *Trainor* v. *Hernandez*, 431 U.S. 434, 444-445 n.8 (1977); *Judice* v. *Vail*, 430 U.S. 327, 336 n.13 (1977); *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592, 607 (1975). In each of the civil actions in which this Court has held *Younger* to be applicable the state was a party to the proceedings and was seeking to promote or protect important state interests. Here, by contrast, as the court of appeals correctly recog-

[11] We do not understand petitioners to contend that *Younger* principles extend to the United States' request for injunctive relief. The court of appeals correctly concluded that additional considerations, including "frustration of superior federal interests," prevent application of *Younger* to the national government (Pet. App. 37a-38a). Cf. *NLRB* v. *Nash-Finch Co.*, 404 U.S. 138, 146 (1971); *Leiter Minerals, Inc.* v. *United States*, 352 U.S. 220, 226 (1957).

nized, *Younger* principles of comity and federalism are inapplicable because this case (Pet. App. 19a-20a)

> involves an exclusively private dispute to which the state has never been a party either in the state or the federal proceedings [and] does not represent a case where the state has undertaken the vindication of important state interests in a civil proceeding.

Moreover, even if the principles of *Younger* were applicable to this case, the relief granted by the district court would not be barred for essentially three reasons. First, the district court did not enjoin further state court proceedings but merely stayed execution of the judgment pending the exhaustion of preexisting state and federal appellate remedies. The only effect of the district court's injunctions was to preserve the status quo and protect respondents from irreparable injury until the respondents' substantial constitutional claims had been fully reviewed by the Mississippi Supreme Court and, if necessary, by this Court. The injunctions granted were carefully limited in both scope and duration to avoid interference with the decisional process of the state courts. Principles of comity and federalism are far less significantly implicated here than in cases where a federal court attempts to preclude a determination on the merits in an action or proceeding pending in state court.

Second, the district court granted its injunctive relief only after respondents had exhausted their state

remedies for a stay of execution of the state trial court judgment pending appeal. The issue before the district court—whether to stay execution of the state judgment—already had been decided adversely to respondents by both the Chancery Court and the Mississippi Supreme Court. The principles of *Younger*, which "counsels federal abstention when there is a pending state proceeding" (*Moore* v. *Sims*, *supra*, slip op. 6), are plainly less weighty when no further proceedings are available in state court on the federal claim. As this Court stated in *Steffel* v. *Thompson*, 415 U.S. 452, 462 (1974), "the relevant principles of equity, comity, and federalism 'have little force in the absence of a pending state proceeding.'" Because in this case there were no stay proceedings pending in the state courts at the time that the district court issued its injunctions, the court of appeals correctly concluded that "[a]s the federal plaintiffs had exhausted all avenues of emergency state relief available to them, * * * the *Younger* doctrine did not require the federal district court to abstain * * *" (Pet. App. 20a-21a).[12]

[12] Contrary to petitioners' suggestion (Pet. 14), a proceeding to obtain a stay of execution on a judgment properly is viewed as a separate, collateral determination apart from the main cause of action. See *National Socialist Party of America* v. *Village of Skokie*, 432 U.S. 43 (1977) (denial of a stay pending appellate review is appealable as a collateral order for purposes of 28 U.S.C. 1291 and parties enjoined from their exercise of First Amendment rights are entitled to such a stay as a matter of right); *Gibson* v. *Berryhill*, 411 U.S. 564, 580 (1973) (principles of equity, comity and federalism do not warrant abstention by the federal court until state appeals are completed where the state agency continues to press charges without awaiting the outcome of the appeal). The fact that an appeal from the main action remains pending does not alter the fact that the state proceedings to obtain a stay have been exhausted.

Third, both the district court and the court of appeals found that the NAACP could not post the $1.56 million supersedeas bond or pay the $1.25 million judgment without having to terminate virtually all of its essential operations and that the other respondents would suffer similar irreparable injury (Pet. App. 29a, 56a). These findings establish the great and immediate irreparable injury that justifies federal court intervention under *Younger*. See 401 U.S. at 46-48. See also *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 932 (1975) ("[R]espondents alleged * * * that absent preliminary relief they would suffer a substantial loss of business and perhaps even bankruptcy. Certainly the latter type of injury sufficiently meets the standards for granting interim relief, for otherwise a favorable final judgment might well be useless").[13]

[13] Petitioners contend that this case does not present any evidence of irreparable injury "because enforcement of the state court judgment can be stayed by respondents if they simply post a bond" (Pet. 15). But this simply ignores the findings of both the district court and the court of appeals concerning the irreparable injury that the bond requirement would cause (Pet. App. 29a, 56a). As the court of appeals stated, "a $1.56 million supersedeas bond (as required by Mississippi law) would effectively bankrupt the [NAACP] bringing all of its activities throughout the United States to an immediate and indefinite halt" (Pet. App. 29a).

c. The court of appeals correctly found that the orders entered by the district court were not barred by the anti-injunction statute, 28 U.S.C. 2283. Section 2283 provides that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." This Court has recognized an implied exception to the statute when the United States seeks to stay proceedings in state court:

> The frustration of superior federal interests that would ensue from precluding the Federal Government from obtaining a stay of state court proceedings except under the severe restrictions of 28 U.S.C. § 2283 would be so great that we cannot reasonably impute such a purpose to Congress from the general language of 28 U.S.C. § 2283 alone.

Leiter Minerals, Inc. v. *United States*, 352 U.S. 220, 226 (1957). See also *NLRB* v. *Nash-Finch Co.*, 404 U.S. 138 (1971). The anti-injunction statute therefore did not bar the relief requested by the United States.

The private respondents' request for injunctive relief, brought under 42 U.S.C. 1983, is also not barred by the anti-injunction statute. 28 U.S.C. 2283 has an exception for injunctions "expressly authorized by Act of Congress * * *," and in *Mitchum* v. *Foster*, 407 U.S. 225 (1972), this Court concluded that 42 U.S.C. 1983 is an Act of Congress "expressly authoriz[ing]"

federal injunctive relief in state court proceedings to protect federal rights. See also *Vendo Co.* v. *Lektro-Vend Corp.*, 433 U.S. 623 (1977); *Trainor* v. *Hernandez*, 431 U.S. 434, 444-445 n.8 (1977).

The court of appeals also concluded that the October 20, 1976, injunctions were permissible under the anti-injunction statute because they were necessary "to protect or effectuate" the district court's injunction of December 15, 1969, which had prohibited attachment of respondents' assets in various Mississippi banks (Pet. App. 33a).[14] Petitioners contend that this portion of the court of appeals' decision is in error on the theory that the December 15, 1969, injunction was dismissed on an earlier appeal when an amended complaint seeking a stay of the state court proceeding was dismissed (see page 5, *supra*). Because, as we have explained above, the anti-injunction statute is inapplicable to injunctions issued under 42 U.S.C. 1983, it is unnecessary to determine whether the statute is inapplicable for the additional reason that the challenged injunction was "to protect or effectuate" the December 15, 1969, injunction.

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[14] Petitioners also argue (Pet. 26) that the December 15, 1969, injunction never became effective because respondents failed to post a necessary bond. The court of appeals correctly concluded that the December 15 injunction required a bond to be posted only as a prerequisite to releasing the funds to the respondents (Pet. App. 31a, 97a). The portion of the injunction prohibiting the merchants "from subjecting or causing to be subjected in any way funds of [the] plaintiffs deposited in the defendant banks to attachment or other process" (Pet. App. 98a) was not conditioned upon posting a bond and therefore was effective at all times (Pet. App. 31a).

Moreover, the latter issue does not present a question of major importance justifying this Court's review. In any event, when the court of appeals ordered the amended complaint of December 15, 1969, dismissed on the prior appeal, the court expressly recognized the continued vitality of the December 15 injunction, stating that it "remains standing, pending a final determination by the district court of the many difficult questions raised by the original plaintiffs' procedural due process claim * * *" (Pet. App. 80a) and that it has not "been affected in any way by the subsequent orders of the district court" (Pet. App. 80a n.9). This conclusion was confirmed by the district court when it issued its October 20, 1976 injunctions (Pet. App. 47a-49a) and again by the court of appeals in its second opinion (Pet. App. 31a-33a). Reviewing the pertinent facts for a second time, the court of appeals stated: "Appellants' present contention that the amended complaint of December 1969 in all respects superseded the original complaint of November 1969 * * * is contrary to the clear understanding of this court and the district court regarding the separate status of the complaints and the orders based thereon" (Pet. App. 32a). The December 15, 1969, injunction thus remained in existence and, to effectuate that prior injunction, the orders of the district court challenged in this case were permissible under 28 U.S.C. 2283.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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